IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10963 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FIROZ ALIAS RAJU GULAM SHAIKH THRO FATHER-GULAM SHAIKH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR MATAFER R PANDE for Petitioner(s) : 1,
MR LR PUJARI, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/06/2007

ORAL JUDGMENT

1. The petitioner has challenged his detention order dated 16th November, 2006 passed by the Police Commissioner, Surat City placing the

petitioner under preventive detention in exercise of power under Section 3(1) of of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as PASA.).

2. The detaining authority was of the opinion that detention of the petitioner is necessary in order to prevent breach of public order. To form such an opinion, the detaining authority relied on the alleged involvement of the petitioner in one case of immoral trafficking. On this isolated incident, the detaining authority came to the conclusion that to prevent breach of public order, detention of the petitioner is necessary.

3. Learned advocate for the petitioner submitted that the opinion formed by the detaining authority is not sustainable in law. That on the basis of one isolated alleged involvement of the petitioner in immoral trafficking, the detaining authority could not have placed the petitioner under detention.

4. On the other hand, learned AGP Shri Pujari opposed the petition submitting that the involvement of the petitioner even in a solitary case may in a given situation be sufficient to permit the detaining authority to hold that his detention is necessary to prevent breach of public order. Reliance in this regard is placed

on the decision of Learned Single Judge of this Court in the case of **Pramod Bhagwan Nayak v. State of Gujarat** reported in 2007(1) GLR 796, wherein the learned Judge upheld an order of detention passed against the detenue who was found to be running business of prostitution and was found to be giving threats to the people and beating them publically so that no one was coming forward to lodge the complaint against him.

5. Having heard learned advocates appearing for the parties, I find that in order to come to the conclusion that it is necessary to place the petitioner under detention to avoid breach in public order, the detaining authority has taken into account the alleged involvement of the petitioner in an isolated incident of breach of Immoral Traffic (Prevention) Act, 1956. The detaining authority also took into account statements collected by the investigating agency while inquiring into the said offence. On the basis of material collected, the detaining authority observed that the petitioner is carrying on anti social activities and is directly involved in the business of immoral trafficking. It was also observed that in furtherance of his illegal activities, he assaults the citizens of the City in public and also threatens them due to which witnesses are not coming forward to given their statements.

6. Having heard learned advocates appearing for the parties and having perused the material on record, I find that the opinion formed by the detaining authority is not sustainable in the eye of law. As noted earlier, except for one isolated incident involving the petitioner in breach of the provisions of Immoral Traffic(Prevention) Act, 1956, there is no further material to suggest that the activities of the petitioner are in breach of public order.

7. Though there was material on record before the detaining authority to suggest that the petitioner was involved in running a brothel and was thus involved in the business of supplying women for immoral trafficking, the question is whether that by itself can be stated to be the activity in breach of public order. Such offences though pose problem of law and order, concept of public order is much different. The detaining authority undoubtedly relied on certain statements recorded by the police authorities while investigating the said offence in which it is stated that the petitioner had assaulted members of the public in public view thereby spreading terror. Here again the moot question is whether one or two such isolated instances would categorise the activities of the petitioner as threat to public order.

8. In the case of **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and another**, reported in AIR 1989 Supreme Court 491, the Apex Court observed that merely because a person is bootlegger, he cannot be preventively detained under PASA unless his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. It was observed that a person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct,the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of any offence will not necessarily come within the purview of public order.

8.1 In case of **Ashokbhai Jivrajbhai @ Jivabhai Solanki v. Police Commissioner, Surat & ors.** reported in 2000(1) GLH 393, Division Bench of this Court examined validity of detention order of the detenue under PASA against whom certain criminal complaints were

pending. In the said case, Division Bench relied on the earlier decision of Apex Court reported in AIR 1966 SC 740 and held that case of the detenue falls under maintenance of law and order and not public order.

9. From the above discussion, I find that there was no sufficient material before the detaining authority to come to the conclusion that the activities of the petitioner are in breach of public order. The opinion formed by the detaining authority therefore, is not sustainable in eye of law. The detention order therefore, based on such an opinion cannot be sustained, same is required to be quashed.

10. In the decision of **Pramod Bhagwan Nayak v. State of Gujarat**(supra), learned Judge was of the opinion that if the incidents or magnitude of activities narrated by witness satisfies the test of repeated or persistent activities, subjective satisfaction of detaining authority cannot be said to have been vitiated. Significantly, in the present case, I do not find that the said requirement as discussed by learned Judge in the above-mentioned decision is fulfilled. Learned Judge relied on the decision of this Court in case of Amanullakhan Kudratallakhan Pathan V. State of Gujarat reported in 1999(1)GLH 1003 wherein it is observed that public order shall be deemed to

have been affected adversely or shall be deemed likely to be affected adversely inter-alia if any of the activities of any person referred to in sub-section directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity amongst the general public or any section thereof or grave or wide spread danger to life, property or public health. The person indulging in such activities can be said to have involved in the activities prejudicial for maintenance of public order.

11. The situation in the present case being substantially different as noted here-in-above, the impugned order is quashed. Since the order of detention is quashed, petitioner shall be released forthwith unless involved in any other criminal cases or detention. Petition is disposed of. Rule made absolute.

Direct service is permitted.

(Akil Kureshi,J.)

(raghu)